

1 HON. BENJAMIN H. SETTLE  
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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 WASTE ACTION PROJECT, a Washington  
non-profit corporation,

Case No. 11-5750BHS

11 Plaintiff,

**CONSENT DECREE**

12 v.

13 EDMAN COMPANY, a Washington  
corporation,

15 Defendant.

16  
17 **I. STIPULATIONS**

18 Plaintiff Waste Action Project sent a sixty day notice of intent to sue letter to Defendant  
19 Edman Company (“Edman”) on July 18, 2011, alleging violations of the Clean Water Act, 33  
20 U.S.C. § 1251 et seq., relating to discharges of stormwater from Edman’s Facility in Tacoma,  
21 Washington and seeking declaratory and injunctive relief, civil penalties and attorneys fees and  
22 costs.

23 Edman denies any fault, wrongdoing, or liability regarding all claims and alleged  
24 violations.

25 Waste Action Project and Edman agree that settlement of these matters is in the best  
26 interest of the parties and the public, and that entry of this Consent Decree is the most appropriate

1 means of resolving this action.  
2

3       Waste Action Project and Edman stipulate to the entry of this Consent Decree without  
4 trial, adjudication, or admission of any issues of fact or law regarding Waste Action Project's  
5 claims or allegations set forth in its complaint and its sixty-day notice.  
6

7       DATED this January 4, 2012  
8

9       COASTLINE LAW GROUP  
10

11       SMITH & LOWNEY PLLC  
12

13       By s/ Kimberly Seely  
14       Kimberly A. Seely, WSBA #21676  
15       Attorneys for Defendant  
16       Edman Company  
17

18       By s/ Richard A. Smith  
19       Richard A. Smith, WSBA #21788  
20       Attorneys for Plaintiff  
21       Waste Action Project  
22

23       EDMAN COMPANY  
24

25       WASTE ACTION PROJECT  
26

27       By \_\_\_\_\_  
28       George Edman  
29       President  
30

31       By \_\_\_\_\_  
32       Greg Wingard  
33       Title: \_\_\_\_\_  
34

## II. ORDER AND DECREE

35       THIS MATTER came before the Court upon the foregoing Stipulations of the parties.  
36  
37       Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,  
38       ADJUDGES, and DECREES as follows:  
39

40       1.       This court has jurisdiction over the parties and subject matter of this action.  
41  
42       2.       Each signator for the parties certifies for that party that he or she is authorized to  
43       enter into the agreements set forth below.  
44  
45       3.       This Consent Decree applies to and binds the parties and their successors and  
46       assigns.  
47  
48       4.       This Consent Decree applies to the operation, oversight, or both by Defendant  
49       Edman Company ("Edman") of its Facility at 2502 Marine View Drive, Tacoma, Washington (the  
50

1 means of resolving this action.

2 Waste Action Project and Edman stipulate to the entry of this Consent Decree without  
3 trial, adjudication, or admission of any issues of fact or law regarding Waste Action Project's  
4 claims or allegations set forth in its complaint and its sixty-day notice.

5 DATED this January 4, 2012

6 COASTLINE LAW GROUP

SMITH & LOWNEY PLLC

8 By Kimberly A. Seely, WSBA #21676  
9 Attorneys for Defendant  
10 Edman Company

By Richard A. Smith, WSBA #21788  
Attorneys for Plaintiff  
Waste Action Project

11 EDMAN COMPANY

WASTE ACTION PROJECT

12 By George Edman  
13 President

By Greg Wingard  
Title: \_\_\_\_\_

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17 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,  
18 ADJUDGES, and DECREES as follows:

19 1. This court has jurisdiction over the parties and subject matter of this action.  
20 2. Each signator for the parties certifies for that party that he or she is authorized to  
21 enter into the agreements set forth below.  
22 3. This Consent Decree applies to and binds the parties and their successors and  
23 assigns.  
24 4. This Consent Decree applies to the operation, oversight, or both by Defendant  
25 Edman Company ("Edman") of its Facility at 2502 Marine View Drive, Tacoma, Washington (the  
26

CONSENT DECREE: No. 11-5750BHS  
p. 2

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

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5       DATED this January 4, 2012

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7       SMITH & LOWNEY PLLC

8       By \_\_\_\_\_  
9       Kimberly A. Seely, WSBA #21676  
10      Attorneys for Defendant  
11      Edman Company

By \_\_\_\_\_  
Richard A. Smith, WSBA #21788  
Attorneys for Plaintiff  
Waste Action Project

12      EDMAN COMPANY

13      WASTE ACTION PROJECT

14       By \_\_\_\_\_  
15      George Edman  
16      President

By \_\_\_\_\_  
17      By Greg Wingard  
18      Greg Wingard  
19      Title: Executive Director

20                    **II. ORDER AND DECREE**

21       THIS MATTER came before the Court upon the foregoing Stipulations of the parties.  
22       Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,  
23      ADJUDGES, and DECREES as follows:

- 24       1.       This court has jurisdiction over the parties and subject matter of this action.
- 25       2.       Each signator for the parties certifies for that party that he or she is authorized to  
26      enter into the agreements set forth below.
- 27       3.       This Consent Decree applies to and binds the parties and their successors and  
28      assigns.
- 29       4.       This Consent Decree applies to the operation, oversight, or both by Defendant  
30      Edman Company ("Edman") of its Facility at 2502 Marine View Drive, Tacoma, Washington (the

1       “*Facility*”).

2       5. This Consent Decree is a full and complete settlement of the claims in the  
3       complaint and all other claims known and unknown existing as of the date of entry of this  
4       Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,  
5       arising from operations of the Facility. These claims are released and dismissed with prejudice.  
6       Enforcement of this decree is Waste Action Project’s exclusive remedy for any violation of its  
7       terms.

8       6. This Consent Decree is a settlement of disputed facts and law. It is not an  
9       admission or adjudication regarding any allegations by Waste Action Project in this case or of any  
10       fact or conclusion of law related to those allegations. It is not evidence of any wrongdoing or  
11       misconduct on the part of Edman.

12       7. Edman agrees to the following terms and conditions in full and complete  
13       satisfaction of the claims covered by this decree:

14           a. Edman will comply fully with all conditions of its National Pollutant  
15       Discharge Elimination System Permit No. WAR003019 (the “*NPDES permit*”) and any  
16       successor, modified, or replacement permit;

17           b. By the date of entry of this Consent Decree, Edman will permanently cease  
18       distributing the contents of its stormwater detention basin to paved areas of the Facility  
19       where industrial activities, including storage and vehicle traffic, occur.

20           c. Not later than December 31, 2011, Edman will increase vacuum sweeping  
21       frequency to a minimum of once each business day the Facility conducts industrial  
22       activities. This sweeping will cover all areas safely accessible by the vacuum sweeping  
23       equipment used by Edman.

24           d. No later than the date of entry of this Consent Decree, Edman will amend  
25       the monitoring and sampling provisions in its Storm Water Pollution Prevention Plan  
26       (“SWPPP”) to include sufficiently detailed instructions to enable inexperienced Edman

1 employees to conduct monitoring and sampling that complies with the NPDES permit and  
2 the requirements of this Consent Decree.

3       e.     Stormwater Management and Treatment: Edman shall implement  
4 corrective measures to manage stormwater at its Facility in three phases as follows:

5           1) Feasibility Analysis: No later than February 29, 2012, Edman will provide  
6 Waste Action Project a Feasibility Analysis ("Analysis") conducted by a qualified  
7 stormwater consultant. The Analysis will present available approaches to manage and  
8 treat stormwater at Edman's Facility to reduce levels of oxygen demand, zinc, and  
9 turbidity, and neutralize the level of pH and otherwise ensure compliance with the NPDES  
10 Permit and requirements of this Consent Decree. The analysis will evaluate available  
11 operational, structural, and treatment measures including but not limited to, structural  
12 modification of operational areas, aeration of stormwater in storage tanks, increased  
13 vacuum sweeping, discharge to the City of Tacoma sanitary sewer, infiltration of  
14 stormwater on-site (e.g., bioretention cell(s)), additional on-site treatment prior to  
15 discharge (e.g., bioretention cell with underdrain, bioretention swale), and combinations of  
16 the above measures. The Analysis will set forth the selected set of measures that will  
17 achieve stormwater management objectives.

18           a.) Waste Action Project will review and either approve or provide  
19 comments on the Feasibility Analysis within 30 days of receipt. In the event that Waste  
20 Action Project submits comments on the Analysis, such comments will be incorporated  
21 into a revised Feasibility Analysis to the extent feasible and resubmitted to Waste Action  
22 Project for approval within 45 day of receipt of such comments. Waste Action Project  
23 will not unreasonably withhold approval.

24           2) Engineering Design Report: No later than June 15, 2012, Edman shall provide  
25 Waste Action Project with an Engineering Design Report that describes the engineering  
26 and other measures necessary to achieve stormwater objectives identified in the approved

1 Feasibility Analysis. The Engineering Design Report will include measures to minimize  
2 erosion and the discharge of pollutants during any associated installation and construction.  
3

4 3) Implementation: No later than October 31, 2012, Edman will implement the  
5 engineering controls and other measures selected in the Feasibility Analysis and verify  
6 that NPDES Permit standards and requirements set forth in this Consent Decree are  
achieved.

7 4) Edman will pay Waste Action Project's reasonable expert fees and costs of up  
8 to \$4,000.00 (FOUR THOUSAND DOLLARS) to review Edman's Feasibility Analysis  
9 comprising recommended measures to achieve stormwater management objectives and the  
10 Engineering Design. Such costs will be payable to Waste Action Project fourteen (14)  
11 days after its receipt of the Engineering Design Report and Edman's receipt of an  
12 accounting of fees and costs. To facilitate review by Waste Action Project's expert,  
13 Edman will provide reasonable access to the facility and information requested by Waste  
14 Action Project's expert.

15 f. Edman will forward copies of all written or electronic communications  
16 between it and Ecology concerning its compliance with the NPDES permit and the Clean  
17 Water Act, including but not limited to discharge monitoring reports to Waste Action  
18 Project on or before the NPDES permit's quarterly due dates for discharge monitoring  
19 reports. This obligation will continue through the termination date of this Consent Decree.

20 8. Not later than 30 days after the entry of this Consent Decree, Edman will pay  
21 \$30,000.00 (THIRTY THOUSAND DOLLARS) to Citizens for a Healthy Bay for Yowkwala  
22 Beach, Squally Beach and Skookum Wulge habitat restoration projects, described in Attachment  
23 A to this Consent Decree. Checks shall be made to the order of Citizens for a Healthy Bay.  
24 Payment shall be sent to: 535 Dock St., Ste 213, Tacoma, WA 98403. Payment shall include the  
25 following reference in a cover letter or on the check: "Consent Decree, WAP v. Edman  
26 Company" A copy of each check and cover letter, if any, shall be sent simultaneously to: Greg

1 Wingard, Waste Action Project, P.O. Box 4832, Seattle, WA 98104.  
2

3 9. Edman will pay Waste Action Project's reasonable attorney and expert fees and  
4 costs in the amount of \$12,000 (TWELVE THOUSAND DOLLARS). Payment will be made  
5 within 30 days of the entry of this decree by check payable and mailed to Smith & Lowney,  
6 PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard A. Smith. This payment is full and  
7 complete satisfaction of any claims Waste Action Project may have under the Clean Water Act  
8 for fees and costs.

9 10. A force majeure event is any event outside the reasonable control of Edman that  
10 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.  
11 Delay in performance of a task required by this decree caused by a force majeure event is not a  
12 failure to comply with the terms of this decree, provided that Edman notifies Waste Action  
13 Project of the event; the steps that Edman will take to perform the task; the projected time that  
14 will be needed to complete the task; and the measures that have been taken or will be taken to  
15 prevent or minimize any impacts to stormwater quality resulting from delay in completing the  
16 task.

17 16. Edman will notify Waste Action Project of the occurrence of a force majeure event as  
18 soon as reasonably possible but, in any case, no later than fifteen days after the occurrence of the  
19 event. In such event, the time for performance of the task will be extended for a reasonable  
period of time following the force majeure event.

20 By way of example and not limitation, force majeure events include

21 a. Acts of God, war, insurrection, or civil disturbance;  
22 b. Earthquakes, landslides, fire, floods;  
23 c. Actions or inactions of third parties over which defendant has no control;  
24 d. Unusually adverse weather conditions;  
25 e. Restraint by court order or order of public authority;  
26 f. Strikes; and

g. Litigation, arbitration, or mediation that causes delay.

11. This court retains jurisdiction over this matter. And, while this decree remains in force, this case may be reopened without filing fee so that the parties may apply to the Court for any further order that may be necessary to enforce compliance with this decree or to resolve any dispute regarding the terms or conditions of this decree. In the event of a dispute regarding implementation of, or compliance with, this decree, the parties must first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute. Such a meeting should be held as soon as practical but must be held within 30 days after notice of a request for such a meeting to the other party and its counsel of record. If no resolution is reached at that meeting either party may file a motion with this court to resolve the dispute.

12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment can be entered in a Clean Water Act suit in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent Decree by the parties, Waste Action Project shall serve copies of it upon the Administration of the U.S. EPA and the Attorney General.

13. This Consent Decree takes effect upon entry by the court. It terminates three years after that date.

14. Both parties have participated in drafting this decree.

15. This Consent Decree may be modified only upon the approval of the court.

16. If for any reason the court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of either party. The parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the court to entry of this Consent Decree.

17. Notifications required by this Consent Decree must be in writing. The sending party may use any of the following methods of delivery: (1) personal delivery; (2) registered or

1 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally  
2 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other  
3 communication regarding this decree to be valid, it must be delivered to the receiving party at the  
4 one or more addresses listed below or to any other address designated by the receiving party in a  
5 notice in accordance with this paragraph 17.

6 **if to WAP:**

7 Waste Action Project  
8 P.O. Box 4832  
9 Seattle, WA 98104  
email: gwingard@earthlink.net

10 **and to:**

11 Smith & Lowney PLLC  
12 2317 East John St.  
13 Seattle, WA 98112  
email: rasmithwa@igc.org

14 **if to Edman:**

15 Edman Company  
16 2502 Marine View Drive  
17 Tacoma, WA 98422  
email: edmanco@wamail.net

18 **and to:**

19 Coastline Law Group PLLC  
20 4015 Ruston Way, Ste 200  
21 Tacoma, WA 98402  
email: kseely@coastlinelaw.com

22 A notice or other communication regarding this Consent Decree will be effective when  
23 received unless the notice or other communication is received after 5:00 p.m. on a business day,  
24 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the  
25 next business day. A notice or other communication will be deemed to have been received: (a) if  
26 it is delivered in person or sent by registered or certified mail or by nationally recognized  
overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the  
receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a

1 change in address for which no notice was given, then upon that rejection, refusal, or inability to  
2 deliver.

3 DATED this 28 day of Feb, 2012.

4  
5  
6 HON. BENJAMIN H. SETTLE  
7 UNITED STATES DISTRICT JUDGE

8 Presented by:

9 COASTLINE LAW GROUP PLLC

10 SMITH & LOWNEY PLLC

11 By s/ Kimberly A. Seely

12 Kimberly A. Seely, WSBA #21676

13 Attorneys for Defendant  
Edman Company

By s/ Richard A. Smith

Richard A. Smith, WSBA #21788

Attorneys for Plaintiff  
Waste Action Project